82-1887

CASE NO._____

UNITED STATES SUPREME COURT

OCTOBER 1982 TERM

JAMES SHELTON,
PETITIONER

V.

UNITED STATES OF AMERICA,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

PETITION FOR CERTIORARI

FOR PETITIONER:

James Shelton
Attorney Pro Se
4733 Village Pl. N.E.
Seattle, Wa. 98105
206-525-6200

QUESTIONS PRESENTED FOR REVIEW

MAY A FEDERAL COURT DISMISS PROPERTY RIGHTS BASED ON UNTIMELY MOTION OR PROCESS, SUCH AS CONTEMPLATED BY DOCTRINE OF "LAW OF THE CASE" OR FEDERAL RULES OF CIVIL PROCEDURE?

PARTIES

PETITIONER: James Shelton d/b/a University Village Music Center.

RESPONDENT: United States of America.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATUTES AND AUTHORITIES

OFFICIAL & UNOFFICIAL REPORTS REFERENCE

On 18 June 1976 Customs agency district office issued Order regarding Petition to District Director #76-3001-00175. This Order was not signed by the District Director (The hearing officer).

On 24 August 1976 Customs agency district office issued Order purportedly in behalf of Regional Director regarding the appeal of customs case #76-3001-00175. The order was not signed by either District Director or Regional Director (Hearing Officers) but merely initialed by someone.

On 13 September 1976 Customs Agency district office issued order forfeiting property of customs case #76-3001-00175. The District Director's Signature was stamped on this order by unkown party.

United States v. One Classic Guitar, etc. 571 F.2d 589 (1978 Remanded 9th Cir.)

James Shelton v. U.S. District Court, U.S.
Unpublished memorandum #79-7091
(9th Cir. 1979, refusing mandamus) 1/

1/ Prior to Petition process an action was filed regarding use of real property. These two cases did not deal with counterclaim issues herein regarding petition process and default thereof or the subject guitar property rights. We list the cases here for reference only.

James Shelton v. U.S. Customs, etc.
565 F.2d 1140 (9th Cir. 1977)

James Shelton v. United States
unpublished memorandum #78-3695 (9th Cir.)
(Refile of first Case)

GROUNDS FOR JURISDICTION

On 22 February 1983 Ninth Circuit Court filed and entered judgment which affirmed the District Court's dismissal of property rights and positive defenses.

On 5 April 1983 Ninth Circuit Court filed and entered judgment which denied rehearing and appellant's request for publication of the decision.

28 U.S.C. 1254 confers on this Court jurisdiction to review this judgment by Writ of Certiorari.

STATUTES AND PROVISIONS OF THE CASE

The Constitution, Amendment Five.

> No person shall be held to answer for a capitol, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in the time of war or public danger; nor shall any person be

subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Federal Rules of Civil Procedure:

Rule 6, 28 USC. Entitled: TIME (See index)

Rule 56, 28 USC. Entitled: Summary Judgment (See index)

STATEMENT OF THE CASE

Defendant/Petitioner, James Shelton, owns and operates a small family music store in Seattle, Washington.

A dispute arose over the price and duty of a guitar which had been routinely ordered from Europe. The U.S. Customs Petition process was defaulted when the Petition was not answered.

Subsequently, United States filed a complaint for forfeiture in U.S. District court. Jurisdiction on the complaint was 28 U.S.C. § § 1345 & 1355 and 19 USC 1604.

Mr. Shelton countercomplained as a positive defense that the customs petition process was unfair and Mr. Shelton was deliberately omitted from the hearings and not notified of those hearings. And, that the petition process was taken from him when unauthorized party initialed and rubber stamped stamped decisions in the District and Regional Director's names. And, that the matter was subsequently prosecuted maliciously.

After filing case the United States has twice tried to get the matter dismissed. The United States applied for and was granted summary judgment dismissing the counterclaims and dismissing Mr. Shelton's claim to the guitar in 1976 by Judge Sharp.

Mr. Shelton appealed and the matter was remanded by Ninth Circuit Court of Appeals panel, Browning, Goodwin and Kennedy. There was no disagreement among panel on controlling law. United States v. One Classic Guitar and case, etc., 571 F.2d 589.

Subsequently, after some 5 years the matter was to come to trial in December 1981. Mr. Shelton subpoena the Plaintiff to produce the guitar and some documents for inspection by expert witness. Plaintiff did not obey the subpoena and Mr. Shelton and the expert witness were left waiting when plaintiff did not show up.

Subsequently, plaintiff requested deposition of Mr. Shelton and some documents. Mr. Shelton refused pursuant to plaintiff's non compliance of subpoena.

Under the circumstances Mr. Shelton relied on Halverson v. Campbell Soup Co. (1967) 374 F.2d 810 (7th Cir.)

> Discretionary sanctions of this rule are inapplicable where the objecting party has disregarded discovery procedures provided in the rules.

Mr. Shelton also relied in part on this Court's ruling in: Societe Internationale Pour Participations Industrielles v. Rogers, 357 U.S. 197, 2 L.Ed.2d 1255, 78 S.Ct 1087

> Provisions of F.R.C.P. Authorizing federal district court to dismiss action for noncompliance of discovery must be read in light of provisions of Fifth Amendment that no person shall be deprived of property without due process of law; there are constitutional limitations on power of courts, even in aid of their own valid process, to dismiss action without affording party opportunity for hearing on merits of his cause.

However, plaintiff subsequently submitted motion for sanctions for non compliance of discovery. Plaintiff's motion did not meet the minimum requirements perscribed in F.R.C.P. Rule 6. But the district court dismissed Mr. Shelton's

claim to the property dispite the untimely-ness and the foregoing circumstances.

Subsequently, plaintiff submitted another motion to dismiss Mr. Shelton's counterclaims and postive defenses to the said property. Plaintiff quoted and included verbatum his earlier 1976 motion to dismiss. This motion also did not comply with minimum requirements of F.R.C.P. 6, 56. district court judge Rothstein granted the summary judgment even though it had been previously remanded by 9th Circuit court and even though not in conformance with F.R.C.P. 6, 56.

Mr. Shelton, again appealed to 9th Circuit court of Appeals. Mr. Shelton maintained inter alia on appeal that the district court abused its discretion in view of Societe Internationale Pour Participations Industrielles v. Rogers, Supra and Halverson v. Campbell Soup Co., Supra and the untimely process of plaintiff's

motions including F.R.C.P. 6, 56 and the doctrine of "law of the case" with regard to plaintiff's motion for summary judgment, reference U.S. v. One Classic Guitar & Case, etc., 571 F.2d 589, Supra.

Plaintifff, in his brief did not even address the foregoing issues but merely presented an overview of the case since he couldn't controvert the defects outlined, by the defendant.

The 9th Circuit court panel of Wallace, Kennedy and Hug ignored court precedent, "law of the case" doctrine and the untimely process worked on Mr. Shelton though the district court. In this regard Mr. Shelton, in addition to the supra cases, cited- Hulson v. Atchison, T. & S.F.R. Co. (1961) 289 F.2d 726 (7th Cir.) to wit:

> F.R.C.P. Rule 6 forbids trial judge or appellate court from entering judgments where motion was not made within limitations imposed by rules.

Note:In his answer to complaint Mr. Shelton countercomplained that he was prevented from attending the Customs hearings during the petition process: First Counterclaim . Paragraph 4.

ARGUMENT FOR THE WRIT

The writ of certiorari should be allowed to protect the property rights our forefathers fought so hard for and to provide continuity between the Court's circuits and to assert the time provisions of F.R. C.P. which afford time for opposing party to properly respond to court matters and the orderly flow of court process.

Mr. Shelton presented one of the best plead civil appeals to the 9th Circuit in recent times. Virtually every conceivable point was covered and backed by case law. The appeal included some 74 cases, beginning as far back as English common law and ranging to modern times. It is really a marvel to read such a well

plead case. In fact the case was so well covered that appellee never addressed the issues in his brief and resorted to a sort of historical overview for a brief.

It is therefore disappointing to have the 9th Circuit opinion so far removed from the other circuits and even from the precedents of this Court. Noteably: Hickman v. Taylor (1974) 392 U.S. 495, and Fuentes v. Shevin (1972) 407 U.S. 67, and Durgin v. Graham (1967) 388 U.S. 919.

> Where any act is required to be done it must follow F.R.C.P. 6
> Anderson v. Yungkau, 329 U.S. 482

The process in the 9th circuit courts was not timely and it is clear that the courts, therefore, lacked jurisdiction.

> The lack of any essential element jurisdiction (power or notice) will render the judgment unenforceable. Restatement of Judgments § 6.

In this regard the 9th circuit is in conflict with not only this Court's ruling

but also other circuit courts as shown in previous chapter and here:

> F.R.C.P. Rule 6 forbids trial judge or appellate court from entering judgments where motion was not made within limitations imposed by rules. Hulson v. Atchison, T & S.F.R. Co., 289 F.2d 726 (7th Cir. 1961)

Plaintiff's motion for summary judgment to dismiss the counterclaims and positive defense to property rights strays even further from case law and court precedent. Not only was the motion not in accordance with F.R.C.P. Rule 6 but also failed to meet the larger requirements of F.R.C.P. 56 for summary judgment.

> The trial court has a duty to see that parties have been given reasonable opportunity to make their record complete or explain their inability to do so before ruling on motion for summary judgment. Lockhart v. Hoenstine (1969) 411 F.2d 455 Cer. Den. 396 U.S. 941 (3rd Cir. 1969)

Again other circuits require compliance with the rules and big government should

not be allowed to run roughshod over a small family business in this manner. It would seem the courts would timper judgments to prevent this kind of thing.

> On motion for summary judgment in federal district court, it is no part of court's function to decide issues of fact but solely to determine whether there is an issue of fact to be tried.
> Lockhart v. Hoenstine (3rd Cir. 1969) 411 F.2d 455 Cer.Den. 396 U.S. 941

The court record clearly shows that an expert document examiner certified the petition decisions as being fraudulent, so that a triable issue does exist on the counterclaims.

> In considering motion, appellate court is required to examine record in light most favorable to party opposing motion.
> Frey v. Frankel, (10th Cir. 1966) 361 F.2d 437

The 9th Circuit court in dismissing this counterclaim decided a point of fact. This is improper use of summary judgment

process in every other circuit. There was certified evidence in the record demonstrating fraudulent action on the petition so that there is a triable issue of fact in this regard.

> Requirements for granting of motion for summary judgment are to be strictly applied to insure that genuine factual issues will not be determined without benefit of trial. F.R.C.P. rule 56, 28 USCA.
> Frey v. Frankel (10th Cir. 1966) 361 F.2d 437

Moreover, this motion had already been heard and remanded by 9th Circuit, U.S. v. One Classic Guitar, etc. 571 F.2d 589, and plaintiff even cited his earlier motion verbatum and presented no new theory or affidavit so that his motion was identical to the first one already review by 9th circuit court. 1/

1/Although plaintiff cited 2 cases which were not in his earlier appeal brief, these cases presented no new theory or court precedent and they were older cases that could have and should have been included in his chapter on that subject in his first brief on this motion.

This is clearly against the doctrine of "law of the case". The doctrine of law of the case is adhered to in other circuits. The doctrine is paramont in preventing party from seeking a more sympathetic panel as was done in this case.

> CONCISE RULE OF LAW: The doctrine of "law of the case" requires that a decision on any question identical to one previously litigated in a particular court, once made, will not be reexamined and redecided in that court merely because of a change in the composition of that court where: (1) there is no disagreement among the judges on the controlling legal principals and (2) the underlying records of the two cases are substantially identical. Lincoln National Life Ins. Co. v. Roosth 306 F.2d 110. Cert Den 372 U.S. 912, 83 S. Ct. 726, 9 L.Ed.2d 720 (5th Cir. 1963)

As shown in Statement of The Case section herein, the judges were not the same in hearing the two motions and each ruled differently. The earlier panel Remanded without costs, while the latter panel Dismissed and awarded costs. Two completely opposite points of view on the same issue i.e. Mr. Shelton's Counterclaims.

The foregoing clearly establishes the untimely and unjust nature of the process worked through the 9th circuit courts by plaintiff and points out that this is not condoned in other circuits.

The theory behind doctrine of "law of the case" is that justice requires a certain stability in the law - a sort of permanence and sureness in decision which transcends variations in a courts actions resulting from a change in personal composition, etc.

Mr. Shelton felt if the 9th circuit was going to set new precedents of law then the matter ought to be published. However, 9th circuit has denied request for publication, which leaves us all in the dark as to what the 9th circuits intentions are? From the foregoing it appears the 9th circuit wants to break precedent only on the instant case, which of course would be unfair and unheard of.

The "law of the case" requirement becomes even more important in modern court systems where the likelihood that any one case will get exactly the same appellate panel each time is not as great as in earlier times. Here, the absence of any disagreement on controlling law and the identity of the two records makes application of the "law of the case" doctrine essential to justice. To permit a reversal here because by "pure chance" the party happened to get a more sympathetic appellate panel, leads to unacceptable uncertainty in the judicial system.

Note that this doctrine is a limitation upon the power of a court to reconsider its prior decisions, like res judicata, but also it is a policy consideration going to questions of judicial administration. With the crowded dockets of present day courts this doctrine is also essential to preserve the courts calendar.

Stability and certainty, of course, are the underlying considerations of the doctrine. These considerations in turn go to questions of judicial efficiency and public confidence in the judicial system.

Note, finally, that the Court of Appeals here is a court of last resort for most civil cases. As such, there is need for its judgments to carry finality, making flexibility of the doctrine here not acceptable.

Of course, even assuming (arguendo), the application of this doctrine were discretionary, not mandatory, but nothing about this case warrants the rejection of the doctrine and overruling of the prior decision.

The public has a right to the provisions of F.R.C.P. 6, 56 and doctrine of "law of the case" and attorney fees should be awarded for vindication of that right. Serrano v. Priest, (1977) 20 Cal.3d 25.

Petitioner previously presented this case law to 9th circuit court to no avail. The long and the short of it is, plaintiff sat on his hands and did nothing for 5 years and then a few weeks prior to trial put on a series of rapid fire motions on shortened times designed to prevent Mr. Shelton, who is inexperienced at law, from formulating adiquate defenses. Plaintiff, thereby, unjustly and without merit acquired Mr. Shelton's property. Dated this 22 April 1983.

Respectfully Submitted,

James Shelton

James Shelton
Attorney Pro Se
4733 Village Pl.N.E.
Seattle, Wa. 98105
206-525-6200

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff/Appellee,

vs

One Classical GUITAR and CASE, and JAMES SHELTON,

Defendants/Appellants.

NO. 82-3124

ORDER

Appeal from the United States District Court for the Weatern District of Washington

Before: Wallace, and Hug, Circuit Judges.

The pertition for rehearing is DENIED.

Also, appellant's request for publication is DENIED.

Petitioner's Note:

Filed on 5 April 1983.

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff/Appellee,

vs

ONE CLASSICAL GUITAR and CASE, and JAMES SHELTON,

Defendants/Appellants.

NO. 82-3124

D.C.NO. 76-731

MEMORANDUM

Submitted - November 24, 1982

Decided - February 22, 1983

Appeal from the United States District Court for the Western District of Wash.
Honorable Barbara J. Rothstein,
United States District Judge, Presiding

Before: Wallace, Kennedy, and Hug, Circuit Judges.*

Appellant's counterclaims were properly dismissed. There was no demonstration that the Government either deliberately prevented appellant from attending hearings or did not correctly follow the appropriate procedures in all respects. Thus no triable issues of

*The panel is unaminously of the opinion that oral argument is not required in this case. Fed.R. App. P. 24(a).

fact underlay the first counterclaim.

The second counterclaim, for malicious prosecution, has been concluded by earlier judgments. See Shelton v. United States Customs Service, 565 F.2d 1140 (9th Cir. 1977) Shelton v. United States, No. 78-3695 (9th Cir. July 21, 1980)(memorandum decision).

The third counterclaim is equally without merit. The actions taken by the Customs Service do not amount to a due process violation because the Government acted expeditiously in processing the claim and in filing its complaint. There was no entitlement to a preseizure hearing. United States v. Two Hundred Ninty-Five Ivory Carvings, 689 F.2d 850, 857 (9th Cir.1982).

The district court also correctly dismissed the property claims as a sanction for failure to cooperate in discovery efforts. See G.K. Properties v. Redevelopment Agency, 577 F.2d 645, 647 (9th Cir. 1978).

The other issues on appeal are without merit, being either repetitious or clearly frivolous. The judgment of the district court

in all respects is affirmed.

Costs will be awarded to the Government upon its filing of a timely bill.

Petitioner's Note:
This Memorandum was filed on 22 Feb. 1983.

There is gross disparity between this memorandum and the case record. As example:

1. Memorandum states - Shelton was not prevented from attending hearings. (Record shows there was no notice of hearings even when Shelton specifically requested notice and that hearing decisions were not properly signed and issued pursuant to 19 CFR et seq.)

2. Memorandum states no triable issue exists, (Record contains expert witness certification that the decision documents were fraudulent).

3. Memorandum upholds district court in all respects (Record shows the plaintiff's motions in district court did not even meet the mimimum 3 day mailing times and holidays contained in FRCP 6).

4. The counterclaims dismissal had previously been dealt with and remanded by 9th Cir. (United States v. One Classic Guitar etc. 571 F.2d 589) and therefore, this second review is prohibited by doctrine of "Law of the case".

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff/Appellee,

vs

ONE CLASSICAL GUITAR AND CASE and JAMES SHELTON, dba UNIVERSITY VILLAGE MUSIC CENTER,

Defendant/Appellants.

NO. 77-2062

MEMORANDUM

Appeal from United States District Court
for the Western District of Washington

BEFORE: Browning, Goodwin and Kennedy, Circuit Judges.

This is an appeal from a forfeiture proceeding commenced in the district court pursuant to 19 U.S.C. § 1608. The United States brought the proceeding against appellant Shelton and an imported guitar and case. For the reasons which follow, we believe that the government's motion for summary judgment was improperly granted by the district court, and we therefore reverse and remand for further proceedings.

The government contends that the guitar in question has a value of between $600 and $800 in Spain and approximately $2,000 in the United States, substantially in excess of the

$265 value orally declared by appellant in previous proceedings before the Customs Department. The government's case is based in large part on an entry in the appellant's books for $734, which apparently relates to a cashier's check made out to the Spanish exporter. Shelton contends that this money was sent to the exporter for the purchase of two guitars, not just one, and that after his troubles with Customs began he wrote to the seller asking him to hold the second guitar until the dispute about the first one had been settled.

The moving party for summary judgment has the burden of showing the absence of any genuine issue of material fact. Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Arney v. United States, 479 F.2d 653, 659-60 (9th Cir. 1973). This is true whether of not the moving party would at trial have the burden of proof on the substantive issue conserned. 6 Moore's Federal Practice 56.15(3), at 56-480, 56.17(26) (2d ed. 1976).

In this case, it appears there are genuine issues of material fact which should not be resolved on a motion for summary judgment. Shelton is proceeding in propria persona and although his briefs are not as lucid as might be desired, they adequately raise the issue of whether summary judgment was improvidently granted. Appellant has made a sufficient showing to raise a genuine issue as to the guitar's value and the price paid for it. Summary judgment is inappropriate. Our holding renders it unnecessary to consider the other issues raised on appeal. We intimate no opinion as to the merits of appellant's case, or the proper outcome upon a trial below.

The judgment is reversed, and the cause is remanded to the district court for further proceedings.

Petitioner's Note:
Memorandum was filed March 3, 1978.

Memorandum held that triable issues should not be resolved on a motion for summary judgment.

UNITED STATES COURT OF APPEALS
FOR NINTH CIRCUIT

JAMES SHELTON,

Petitioner,

vs

UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT OF WASHINGTON,

Respondent,

and

UNITED STATES OF AMERICA,

Real Party in Interest.

NO. 79-7091

D.C.NO. 76-731

ORDER

Before: Goodwin and Sneed, Circuit Judges.

Upon due consideration, the petition for mandamus is denied.

Petitioner's Note:

Filed on April 5, 1979

Involved discovery refusal by United States.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs ONE CLASSICAL GUITAR AND CASE, Defendants. and JAMES SHELTON, d/b/a UNIVERSITY VILLAGE MUSIC CENTER, Claimant.	NO. C76-731R MOTION TO SHORTEN TIME

COMES NOW the plaintiff, by Robert M. Taylor, assistant United States Attorney, and moves the Court to shorten the time for hearing on plaintiff's motion for sanctions to February 19, 1982. This motion to shorten time is necessary because trial in this matter is set for March 1, 1982.

DATED this(10th) day of (February), 1982.

Gene S. Anderson
United States Attorney

(Signed)
Robert M. Taylor
Assistant U.S. Attorney

IT IS SO ORDERED.

Dated this (16th) day of (February), 1982.

MOTION TO SHORTEN TIME

(Signed)
United States District Judge

Petitioners Note:

Motion lodged February 10, 1982.

Order filed 16 February 1982.

Allowing for holidays, weekends and 3 day mailing under FRCP 6, defendant could not reasonablely be expected to recieve this motion until February 18, 1982. This is 2 days after the order was signed.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs ONE CLASSIC GUITAR AND CASE, Defendants, and JAMES SHELTON, d/b/a UNIVERSITY VILLAGE MUSIC CENTER, Claimant.	NO. C76-731R ORDER

This matter having come to the Court's attention on the plaintiff's Motion to Shorten Time for Hearing pursuant to CR 6(d), Rules for the United States District Court for the Western District of Washington, and the Court being fully advised in this matter, it is therefore,

ORDERED that the date of February 25, 1982 is hereby set for hearing.

Dated this (22nd) day of February, 1982.

(Signed)
United States District Judge

Presented by:

(Signed for)
Robert M. Taylor
Assistant U.S. Attorney

Petitioner's Note:
Motion:
Lodged on 18 February 1982.

Mailed on 18 February 1982.

Order:
Signed on 22 February 1982.

Filed on 22 February 1982.

Order set summary judgment hearing for 25 February 1982.

Allowing for holidays, weekends and 3 day mailing under FRCP 6, defendant could not reasonablely be expected to recieve this motion until 25 February 1982. This is 3 days after this order was signed and actually the day set for hearing summary judgment motion. FRCP 56 actually controls summary judgment times.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, vs ONE CLASSIC GUITAR AND CASE, Defendants, and JAMES SHLTON, d/b/a UNIVERSITY VILLAGE MUSIC CENTER, Claimants.	NO. C76-731 ORDER GRANTING PLAINTIFF'S MOTION TO IMPOSE SANCTIONS

THIS MATTER comes before the court on plaintiff's motion to impose sanctions under Fed.R.Civ.P.37. Having considered the motion, memoranda of counsel and the record herein, the court finds and rules as follows:

Claimant, James Shelton, was served by the United States with proper notice of his deposition scheduled January 22, 1982. Mr. Shelton failed to appear. He was immediately contacted and offered an opportunity to appear but refused and stated that he did not wish to be deposed. He has since submitted a "Reply to Notice of Deposition" stating that he does

not believe he should be required to appear and produce documents.

Mr. Shelton's refusal to appear is unwarranted and wilful. He has not sought a protective order. His behavior justifies dismissal of his claim. G.K. Properties v. Redevelopment Agency, 577 F.2d 645, 647 (9th Cir. 1978).

It is hereby ORDERED that Mr. Shelton's claim be DISMISSED and that this case proceed to forfeiture. This dismissal is conditional; if Mr. Shelton arranges to be deposed by the United States on or before March 1, 1982, the dismissal will be vacated and trial will begin on Wednesday, March 3, 1982.

The clerk of the court is directed to send uncertified copies of this order to all counsel of record.

DATED at Seattle, Washington this(23rd) day of February, 1982.

(signed)
Barbara J. Rothstein
United States District Judge

Petitioner's Note:

Filed on 23 March 1982.

Allowing for holidays, weekends and 3 day mailing under FRCP 6, the earliest defendant could reasonablely be expected to receive this order is March 1, 1982. This is the day the court's ultimatum expired.

This order makes no allowance for plaintiff's non-compliance with discovery subpoena.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, vs ONE CLASSIC GUITAR AND CASE, Defendant, JAMES SHELTON, Claimant.	NO. C76-731R SUPPLEMENTAL ORDER RE: PLAINTIFF'S MOTION TO IMPOSE SANCTIONS

THE COURT hereby supplements its order of February 24, 1982 to require the defendant, in order to avoid dismissal of his claim, not only to arrange to be deposed but to produce documents as specified in plaintiff's notice of deposition. In all other respects the court's order of February 24, 1982 remains in effect.

IT IS SO ORDERED.

The clerk of the court is directed to send uncertified copies of this order to counsel of record.

DATED at Seattle, Washington this (24th) day of February, 1982.

(Signed)
Barbara J. Rothstein
United States District Judge

Petitioner's Note:

Order filed on 25 February 1982.

Allowing for holidays, weekends and 3 day mailing pursuant to FRCP 6, the earliest the defendant could be expected to receive this order is 2 March 1982. This is one day after the court's ultimatum expires.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

PRESENT: THE HONORABLE BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE

C. R. KIMZEY
Court Clerk

Date: February 25, 1982

MINUTES - CIVIL

Case No. C76-731R

Title: United States of America v. One Classic Guitar, etc.

Attorney for plaintiff:	Attorney for Defendant:
None-present	None Present

Proceedings: In Chambers:

The court orders that the plaintiff's motion for summary judgment reaffirming Judge Sharp's order dismissing defendant-claimant's counter-claims GRANTED.

cc: Robert Taylor, AUSA
James Shelton

Petitioner's Note:

Filed 25 February 1982

The summary judgment motion was filed and mailed on 18 February 1982. Allowing for week-ends, holidays and 3 days mailing pursuant FRCP 6, defendant only had 3 days to respond. Reference FRCP 56.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA VS ONE CLASSIC GUITAR JAMES SHELTON d/b/a University Village Music Center	Civil Action No. C76-731R JUDGMENT

This action came on for trial (hearing) before the Court, Honorable Barbara J. Rothstein United States District Judge, presiding, and the issues having been duly tried (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the Court grants plaintiff's motion for summary judgment reaffirming Judge Sharp's order dismissing defendant-claimant's counterclaims.

Dated at Seattle, Washington, this 1st day of March, 1982.

(signed)
Deputy Clerk of Court

Petitioner's Note:

Filed on 1 March 1982.

United States District Court
Western District of Washington
at Seattle

UNITED STATES OF AMERICA,

Plaintiff,

vs

ONE CLASSIC GUITAR AND CASE,

and Defendants

JAMES SHELTON, d/b/a University Village Music Center (Importer),

Claimant.

Civil Action No. C76-731S

JUDGMENT

This action came on for consideration before the Court, Honorable Morell E. Sharp United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered,

It is Ordered and Adjudged that plaintiff's motion for summary judgment with regard to the Complaint for Forfeiture is GRANTED and judgment of forfeiture and judgment denying claimant's counterclaims is hereby entered.

Dated at Seattle, Washington, this 30th day of March, 1977.

(signed)
Deputy Clerk of Court

Petitioner's Note: Filed 30 March 1977

RULES OF CIVIL PROCEDURE

Rule 6 TIME

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of ttime begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 77(c), "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any other day appointed as a

holiday by the President or the Congress of the United States, or by the state in which the district court is held.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the espiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b),52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) Rescinded. Feb.28, 1966, eff. July 1,1966.

(d) For Motions - Affidavits. A written motion, other than one which may be heard ex

parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59 (c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.

(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon hom by mail, 3 days shall be added to the prescribed period.

JUDGMENT

Rule 56

Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be

rendered forthwith if the pleadings, depos-t. sitions, answers th interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessaru, the c court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertaim what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent

to which the amount of danafes or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavirs shall be made on personal knowledge, shall set forth such facts as would be admissable in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copeis of all papers or parts thereof referred to in an affidavet shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion of summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits

or as otherwise provided in the rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuamce to permit affidavirs to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delau, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur

including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.